

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

KIM E. MOITTOZA, as Administratrix	:	
and on behalf of all beneficiaries	:	
of the Estate of Charles H. Erinakes	:	
	:	
v.	:	C.A. No.: 1:16-cv-00391-M-LDA
	:	
UNITED STATES OF AMERICA	:	

**SECOND AMENDED COMPLAINT**

**PARTIES**

1. Kim E. Moitoza, as Administratrix and on behalf of all beneficiaries of the Estate of Charles H. Erinakes. She is a citizen and resident of Saunderstown, Rhode Island and of the United States of America.

2. Defendant United States of America is the party being sued for the acts and/or omissions of the United States Veterans Affairs Medical Centers.

**VENUE AND JURISDICTION**

3. Venue is proper in that all, or a substantial part of the acts and omissions forming the basis of these claims occurred in the District of Rhode Island. Additionally, Plaintiff resides in Rhode Island and bring this complaint in the United States District Court where he resides.

4. Certain claims herein are brought against the United States pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b); 2671-2680.

5. Pursuant to 28 U.S.C. § 1346(b) and 28 U.S.C. § 2675, the claims herein against the United States were presented to the Department of Veterans Affairs on December 10, 2014. The Department of Veterans Affairs failed to make a decision on plaintiff's

administrative claim within the time provided for by law. Accordingly, a constructive denial of the claim has occurred.

**COUNT I**  
**NEGLIGENCE**  
**UNITED STATES OF AMERICA**

1. On or about September, 2011, the United States Veterans Affairs Medical Centers, by and through its agents, actors and employees, undertook for valuable consideration to diagnose, treat, and care for Charles H. Erinakes.

2. It then and there became and was the duty of defendant United States of America, by and through its agents, actors and employees, to exercise ordinary care in the diagnosis, treatment and care of Mr. Erinakes.

3. Nevertheless, defendant disregarded its duty as aforesaid and failed to exercise said degree of diligence and skill in that it failed to properly diagnose and failed to render adequate, proper, and necessary treatment to Charles H. Erinakes and was otherwise negligent in its diagnosis, treatment, and care of him.

4. As a direct and proximate result of defendant's negligence, carelessness and recklessness as aforesaid, Charles H. Erinakes suffered severe personal injuries and pain and suffering which ultimately resulted in his wrongful death on June 12, 2015.

5. By reason of the foregoing, Charles H. Erinakes' estate has incurred expenses for medical and nursing treatment and care, medicines, counseling, and the like, which damages are remunerable under R.I. Gen. Laws §10-7-5.

6. By reason of the foregoing, Charles H. Erinakes suffered severe injuries to his mind and body, nerves, and nervous system, and endured extreme pain and suffering, all of which damages are remunerable on behalf of the estate of Charles H. Erinakes as set forth under R.I. Gen Laws §10-7-7.

WHEREFORE, plaintiff Kim E. Moitoza, as Administratrix and on behalf of all beneficiaries of the Estate of Charles H. Erinakes, demands judgment against defendant United States of America in an amount sufficient to establish the jurisdiction of this Court plus interest and costs and whatever further relief this Honorable Court deems appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury and designates Amato A. DeLuca as trial counsel.

Plaintiff,  
By her Attorneys,

/s/ Amato A. DeLuca  
Amato A. DeLuca (#0531)  
Shad Miller (#8594)  
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DATED: May 8, 2017

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UNITED STATES OF AMERICA	:	

**CERTIFICATION**

I hereby certify that this document was filed through the ECF system and will be sent electronically to the registered participants identified on the Notice of Electronic Filing (NEF) and that papers copies have been sent to those indicated as non-registered participants on this 8th day of May 2017.

/s/ Amato A. DeLuca